IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6671 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

SANCHALAKSHRI, SHRI DURGA VIDYALAYA

Versus

VIJAYKUMAR RAGHUVIRPRASAD MEHTA

Appearance:

Mr Bharat J Shelat, Senior Advocate with MR Shirish Joshi for Petitioners

MR H M Mehta, Senior Advocate with Mr HJ NANAVATI for Respondent No. 1

SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 14/10/97

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner

seeks direction to quash and set aside the order dated 1st September 1997 passed by the Gujarat Secondary Education Tribunal whereby the order of termination of respondent No.1 dated 15th March 1994 has been modified and penalty of stoppage of one increment with future effect is inflicted.

2. The brief facts of the case are as under:

Respondent No.1 - original applicant was declared as surplus teacher on closure of Pallavi Vidyalaya, Paldi, Ahmedabad and was sent to Durga Vidyalaya - the petitioner school to join service with effect from 25th November 1988. His service book was not sent by Pallavi Vidyalaya to the petitioner school after great persuasion as late as on 23rd November 1992. Respondent No.1 wanted his pay to be fixed as per the revision of the pay-scale in accordance with the recommendations of the 4th Pay Commission. It may be stated that the said recommendations came into operation with effect from 1st January 1986 and in the month of July 1987, the Government had decided to extend the said benefit to the teachers of non-government secondary schools. However, respondent No.1 was getting salary in the pay-scale of Rs.1400-2600 at the Pallavi Vidyalaya and the petitioner school continued to recommend the said salary to the Government in its regular pay bills on the basis of 'last pay certificate' which has been produced by the first respondent on his resuming duties with the petitioner school. However, when the original service book was received from the Pallavi Vidyalaya by the petitioner, it came to the petitioner's knowledge that in the service book endorsement as regards fixation of salary in accordance with the aforesaid was not signed by the competent authority, namely, District Education Officer or Education Inspector. Similarly, there was no signature of the auditor. The petitioner therefore wrote a letter on 31st July 1993 to respondent No.1 indicating therein that the service book received is not complete; there are certain deficiencies regarding signature of the District Education Officer in the pay fixation as also there is no signature of the auditor and therefore fixation in the higher pay scale cannot be done. Therefore, respondent No.1 was instructed to get endorsement completed. Thereupon, respondent No.1 by his letter dated 4th August 1993 requested the petitioner to hand over the 'last pay certificate' and service book for getting necessary endorsement completed. Accordingly, respondent No.1 was given his service book, last pay certificate and the original order declaring him as

surplus. Respondent No.1 thereafter handed over original service book and last pay certificate to the petitioner along with his letter wherein he stated that the deficiencies were being removed and what was lacking in the service book has been completed. The petitioner on going through the documents received from respondent No.1 doubted signatures appearing thereon as genuine as it was not possible to have the said deficiencies removed in such a short period of just 3 or 4 days. Therefore on 24th August 1993 respondent No.1 was asked that the signature appeared on the service book is not legible and that in future the papers will have to be submitted to the signature of the Director in which case it is necessary to know the name of the signatory or the authority who signed. Respondent No.1 was asked to give name of the officer who has signed the service book. He thereupon gave in writing on 24th August 1993 that the signature is that of Education Officer, Shri S.M.Parmar. A letter was therefore addressed to Shri Parmar and on verifying from him that the signature found on the documents was not his signature, a show cause notice was issued to respondent No.1 on 23rd September 1993. An enquiry was conducted by the Enquiry Committee in accordance with regulations. The Inquiry Committee submitted its report on 6th January 1994. After receipt of the report, the management decided to terminate the service of respondent No.1 and therefore a proposal was sent to the District Education Officer along with the report of inquiry. Since nothing was heard from the District Education Officer, the petitioners got deemed approval of the action and therefore after expiry of 45 days, passed an order terminating respondent No.1 from service. Respondent No.1 against the order of termination dated 15th March 1994 approached the Gujarat Secondary Education Tribunal at Ahmedabad. The Tribunal also found the charges proved. It was also expressed that the act on the part of the applicant who happens to be a teacher does amount to a serious misconduct. However, on the quantum of punishment, the Tribunal considering special features of the case modified the order by substituting punishment of one increment with future effect instead of termination. The relevant finding of the Tribunal reads as follows:

" However, in view of the circumstances, which are narrated herein, I am of the opinion that if the respondents had acted reasonably in the pay fixation of the applicant, perhaps, this mishap in the service career of the applicant could have been averted. This observation of mine may not be construed to mean that if the fixation is

delayed by the authorities, employee is justified to act in the manner in which the applicant has acted. It is an admitted fact that the applicant was declared surplus from the Pallavi Vidyalaya and w.e.f. 25.11.88 he is absorbed in the respondent school consequent upon the closure of Pallavi Vidyalaya. As per statutory Reg.23 of the Secondary Education Regulations, 1974 there shall be a service book opened by every management of a registered school for every employee within 3 months from his appointment. Statutory Reg.35 provides as under:

(1) Where a teacher who either leaves service after due notice or whose services are terminated by the management, requests for discharge certificate, the management shall give to such a teacher a discharge certificate, in Form VII within a week from such request;

(2) Where the management refuses to give such certificate, it shall give reasons in writing for such refusal.

Thus, when the services of the applicant were terminated from Pallavi Vidyalaya w.e.f. 24.11.88 and the applicant was absorbed in the Durga Vidyalaya with protection of his services as per the Government policy, it was incumbent upon the Pallavi Vidyalaya to send his S.B. and D.C. to the present school i.e. Durga Vidyalaya within time stipulated in the Regulation or within reasonable time. In the instant case, the S.B. was sent to the Durga Vidyalaya by Pallavi Vidyalaya on 23.11.92 (Ex.J) which is after 4 years of his absorption. It appears that due to this delay the pay fixation of the applicant was also delayed and his arrears remained unpaid. From the letters of the applicant dt. 8.2.90 (Ex.G) dt.3.7.90 (Ex.H) and the letter of the applicant dt. 17.12.92 to the D.E.O. (Ex.K) regarding payment of his arrears and the letter of the Pallavi Vidyalaya dt. 12.3.93 (Ex.L), it appears that despite the requests made by the applicant, the pay fixation of the applicant is delayed and unfortunately, delayed to such an extent that though the Fifth Pay Commission is announced by the Central Government (though not adopted by the State Government yet) the pay

fixation pursuant to the 4th Pay Commission which is made applicable w.e.f. 1.1.86 is not yet finalised. From the letter at Ex.X dt. 17.10.93 written by the applicant to the D.E.O., it appears that the S.B. and D.C. of the applicant were wrongfully withheld by the Pallavi Vidyalaya from 25.11.88 to 22.11.92. In view of the above position, as the pay fixation of the applicant is unduly delayed though I hold that the applicant is guilty of the charges as discussed hereinabove, looking to the circumstances, punishment of economic death, particularly taking into consideration his relatively young age deserves to be reduced. In Reg. 27 (a)(2) 'Code of Conduct' the punishments are enumerated. In the instant case, in my opinion, the punishment of economic death i.e. dismissal deserves to be modified to the punishment of stoppage of one increment with future effect as indicated at Item-3 of Reg. 27 (a) (2). The punishment of stoppage of increment will be with future effect so that throughout his career, it will act as a deterrent and a reminder to the delinquent which will prevent him from indulging into such incidences in future. There is another circumstance which weighs with me for reducing the penalty of the applicant is that in view of Regulation mentioned hereinabove, as the applicant was continuing with respondent No.2 school, respondent No.2 school ought not to have given the important document like S.B. to the applicant because the pay fixation work is to be got done by the management. In the facts and circumstances of the case, and more particularly the circumstances narrated in this paragraph, in my humble opinion the judgments of Hon.'ble High Court reported in 1996 (2) GLH 546 and 25 92) GLR 870 cited by the L.A. Mr.Joshi are not applicable."

3. It is contended by Mr.B.J.Shelat, Senior Advocate that the Tribunal committed error in modifying the order of termination without giving an opportunity of hearing to the petitioners on the question of quantum of punishment. The learned Counsel relying on the unreported decision of the Apex Court in the case of SHRIJI VIDYALAYA v. PATEL ANIL KUMAR LALLUBHAI in Criminal Appeal No.6724 of 1983 decided on 20.8.1997 submits that the power to award appropriate punishment vests with the management and the Tribunal cannot exercise the power of interfering with the order of

punishment inflicted by the management. It is further submitted that even if this court feels that the punishment awarded by the management is disproportionate, a direction may be given to respondent No.2 - District Education Officer to accommodate respondent No.1 in any other school as the petitioner school has lost confidence in him.

4. The Apex Court in the case of B.C.CHATURVEDI v. UNION OF INDIA reported in Judgment Today 1995 (8) 65 after reviewing the case law in support of judicial review of powers of the Tribunal in disciplinary matters and nature of punishment held that High Court/ Tribunal while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. However, the Court also held that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief either directing the disciplinary or appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. In the concurring judgment, Hansaria J. pointed out that mere fact that there is no provision parallel to Article 142 relating to the High Court, it can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. The court further observed that absence of provision like Article 142 is not material. Referring to earlier judgment of the Apex Court in SHIVDEO SINGH's case reported in AIR 1963 SC 1909, the court said that High Court too can exercise power of review which inheres in every court of plenary jurisdiction. Hansaria J. further observed that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. Their Lordships further observed that, in case of dismissal, Article 21 gets attracted and in view of the inter-dependence of fundamental rights which concepts was first accepted in the case of bank nationalisation and extended to cases attracting Article 21 in MANEKA GANDHI's case (AIR 1978 SC 597), punishment/ penalty awarded has to be reasonable and if it be unreasonable, Article 14 would be violated. The court observed that:

> "Article 14 gets attracted in a case of disproportionate punishment was the views of this court in Bhagat Ram v. State of Himachal Pradesh 1983 (2) SCC 442 also. Now, if Article 14 were

to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it."

(emphasis supplied)

5. It is not the absolute law that High Court or the Tribunal has no power to substitute the punishment in the punishment awarded by the Disciplinary authority. The law is that normally the Court/Tribunal should not substitute its punishment. This is what being said in the unreported decision cited by the petitioner-Management of the School. It cannot be lost sight that disproportionate punishment attracts Article 14 and 21 of the Constitution, and thus in exceptional and rare cases where on facts of the case, fault of the employee is found to be not of that magnitude which calls for extreme penalty of dismissal, Tribunal or the Court in exceptional case for cogent reasons can substitute by reasonable punishment.

6. In the instant case, Tribunal has given cogent reasons for substituting the punishments, which I have reproduced in the preceding paragraph. It is not necessary for me to repeat all the reasons but suffice it to say that the respondent No.1 was compelled by the circumstances to commit the offence. By this he has not been extra benefitted to which he can be said to be not entitled. In fact he lost the strength to further sustain inaction. It must be the frustration on account of unusual delay in fixation of pay, which led him to commit the offence in a weak moment. Who created this situation is also a relevant factor. The same allegations in different set of circumstances may warrant penalty of dismissal, but in the peculiar facts of the case, the tribunal considering it to be an exceptional case, for the cogent reasons, has rightly interfered with the punishment awarded to respondent No.1, which does not call for intereference by this Court in exercise of powers of superintendence under Article 227 of the Constitution of India. On conspectus of the facts, in my view, ends of justice would meet, if the penalty substituted by the Tribunal is slightly modified by instead of stoppage of one increment, it is substituted by stoppage of two increments with cumulative effect.

7. So far as the prayer for transfer of the petitioner to any other school is concerned, I am not impressed by such a prayer. This in itself reflects the vindictive attitude of the school management. It is contended by Mr Shelat that the management has lost its

confidence in respondent No.1. It can in no way be a case of losing confidence. The forgery in the present case is not of a nature where a person may lose confidence which could have been in case of a bank employee or such others like management. The attitude of the management towards its employees must be more friendly. I have observed that when a surplus teacher is sent to other privately managed schools, such school do not welcome for the obvious reasons and consider them as a burden. The surplus teachers are victimised and dragged into litigations. Still, if the management has any difficulty with respondent No.1, they may approach to respondent No.2 and such a request if made, shall be considered by the respondent No.2. in its right perspective, in accordance with law without causing inconvenience to respondent No.1.

8. In view of the aforesaid, I allow this Special Civil Application and modify the order of the Tribunal dated 3.9.1997 only to the extent that, instead of stoppage of one increment with future effect, it will be substituted by stoppage of two increments with future effect.

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